

RIGHT OF WAY AGREEMENT

THIS AGREEMENT, made and entered into as of the 12th day of April, 19 83
by and between The Veterans Administration, acting for and in behalf of the United States
of America, under and by virtue of the authority in 40 United States Code 319
(76 stat. 1129)
hereinafter called "Grantor", (whether grammatically singular or plural) and the CITY AND COUNTY OF DENVER, acting
by and through its BOARD OF WATER COMMISSIONERS, hereinafter called "Board".

WITNESSETH:

For and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) to the Grantor in hand paid by the Board, the receipt whereof is hereby acknowledged, the Grantor hereby grants to the Board, its successors and assigns, the permanent right to enter, re-enter, occupy and use the hereinafter described property to construct, maintain, repair, replace, remove, enlarge and operate one or more water pipelines and all underground and surface appurtenances thereto, including electric or other control systems related thereto including underground cables, wires and connections and surface appurtenances thereto. By way of example and not by way of limitation, the parties intend to include within the terms pipelines and appurtenances, the following: mains and conduits, valves, vaults, manholes, control systems, ventilators and the like in, through, over and across the following described parcel of land situate, lying and being in the City and County of Denver and State of Colorado, to-wit:

A strip of land thirty (30) feet in width situated in the southeast quarter of the northwest quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 6, Township 4 South, Range 67 West of the Sixth Principal Meridian.

Being the east twenty-two (22) feet of that portion of Birch Street as vacated by Ordinance Number 129 of 1948, lying between the north line of vacated 11th Avenue and the south line of Hale Parkway, along with the west eight (8) feet of lots 16 through 24 inclusive of Block 12 of "Bellevue Park" subdivision being more particularly described and bounded as follows:

Beginning at a point on the north line of vacated 11th Avenue, said point also being on the north boundary of the Board's right-of-way for a 16-inch water main and also being the southwest corner of said Block 12, whence the west quarter corner of said Section 6 bears South 88°40'53" West a distance of 1303.8 feet more or less; thence South 90° West along said north line of vacated 11th Avenue a distance of 22.00 feet to a point; thence North 0° West a distance of 213.94 feet to a point on the south line of Hale Parkway; thence South 80°59'37" East, along said south line of Hale Parkway a distance of 30.37 feet to a point; thence South 0° East a distance of 209.18 feet to a point on the north line of said vacated 11th Avenue; thence South 90° West, along said north line, a distance of 8.0 feet more or less to the point of beginning as shown on D.W.D. drawing Dr. 402 No. 27, a copy of which is attached hereto and made a part hereof.

The above described strip of land contains 6,347 square feet more or less.

IT IS HEREBY MUTUALLY covenanted and agreed by and between the parties hereto as follows:

1. The Board shall have and exercise the right of ingress and egress in, to, over, through and across the above described property for any purpose needful for the full enjoyment of any other right of occupancy or use provided for herein.

2. The Grantor shall not construct or place any structure or building, street light, power pole, yard light, mail box or sign, temporary or permanent, or plant any shrub, tree, woody plant or nursery stock, on any part of the above described right-of-way. Any structure or building, street light, power pole, yard light, mail box or sign, temporary or permanent, or shrub, tree, woody plant or nursery stock, of any kind situated on the above described right-of-way as of the date of this Agreement, may be removed by the Board without liability for damages arising therefrom. The Grantor shall not construct fencing across or within the above described property without the written approval of the Board.

3. This grant may be terminated by the Government for breach by the Board of any of the conditions recited herein.

3. The Grantor shall make the initial installation of the water pipeline within the right-of-way herein described at his sole expense. The water pipeline shall be installed in accordance with the current Department Engineering Standards.

4. The Board shall have and exercise the right of subjacent and lateral support to whatever extent is necessary or desirable for the full, complete and unmolested enjoyment of the rights hereinabove described. It is specifically agreed between the parties that the Grantor shall take no action which would impair the earth cover over, or the lateral or subjacent support for any water pipeline or lines and appurtenances within the right-of-way, provided, however, that upon obtaining the specific written permission of the Board, the earth cover over any water pipeline or lines may be modified, but normally permission will not be granted for a modification involving a cover of less than four feet nor greater than ten feet measured vertically from the top of any water pipeline or lines, and any modification undertaken by the Grantor would be upon terms which would provide for reimbursement to the Board of the cost of any alterations to any pipeline facility made necessary by the change.

5. The Grantor, at his sole expense, shall construct and maintain a 30-foot wide private surfaced roadway over the right-of-way herein described. Planters, islands, medians or similar land dividers are not permitted within the above described right-of-way.

6. The Grantor retains the right to use the right-of-way heretofore described for ingress and egress, including vehicular traffic, insofar as such use and occupancy is consistent with and does not impair any grant herein contained. Parking within the right-of-way is prohibited.

7. The Board agrees that other utilities such as sanitary sewer, storm sewer, gas and electric lines, not including cable TV lines and lawn sprinkler pipes, may be installed in the above described right-of-way, as long as they do not interfere with the Board's rights herein granted; however, the installation of any and all of said utilities which parallel the Board's facilities will not be permitted within ten feet of said Board facilities. The intent herein is to reserve for the Board's water lines at least twenty (20) feet of the easement width. All plans for installing other utilities, excepting right angular crossings within the right-of-way herein granted, must be approved in writing by the Board prior to commencement of such installation.

8. Except for other utilities as authorized in Paragraph 7, and roadways, all surface and sub-surface uses of said right-of-way must be authorized by written license from the Board.

9. Grantor, at its expense, shall be solely responsible for the maintenance of streets, surfacing, curbing, gutters and sidewalks within said right-of-way, except as specified in this paragraph. When the Board deems it necessary to reconstruct, repair, relocate, remove, replace, enlarge, operate or in any way maintain water mains, or pipes and appurtenances within the above described right-of-way, it will backfill, compact and resurface, including asphalt and/or concrete paving, replace curbs, gutters and sidewalks damaged by Board activity in the immediate area of excavation for such work as nearly as may reasonably be to the grade and condition existing immediately prior to excavation. The Board will exercise all reasonable means to prevent loss or damage to curb, gutter and sidewalks, resulting from the construction, repair, replacement, removal, maintenance, enlargement and operation of its facilities, which are situated within the right-of-way but outside of the immediate area of excavation for the work. In the event said improvements are damaged or destroyed due solely to Board negligence, the Board will repair and/or replace said improvements at its expense.

10. The Board may properly acquire, own, and exercise the rights in the subject property as herein provided in order to insure to the Board a dominant easement for the exercise of the Board's functions, and the exercise of any rights in the subject property other than those retained by the Grantor shall be within the sound discretion of the Board. The Board agrees to permit and authorize such other uses of the subject property, not reserved in the Grantor, as will not impair the Board's dominant rights and upon such reasonable terms, limitations, and conditions as the Board shall find reasonably necessary to protect its dominant right of occupancy of the subject property for the purpose of the Board without undue or unnecessary injury to or impairment of the estate retained by the Grantor.

11. In case the Board shall abandon its rights herein granted and cease to use the same, all right, title and interest hereunder of the Board shall cease and terminate, and all rights of the Board so abandoned shall cease and terminate, and the Grantor shall hold said premises, as the same may then be, free from the rights so abandoned and shall own all material and structures of the Board so abandoned, but nothing herein shall be construed as working a forfeiture or abandonment of any interest derived hereunder and not owned by the Board at the time of the abandonment of Board rights.

12. The Grantor warrants that he has full right and lawful authority to make the grant hereinabove contained, and promises and agrees to defend the Board in the exercise of its rights hereunder against any defect in his title to the land involved or his right to make the grant hereinabove contained.

13. Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the parties hereto.

14. Unless special provisions are attached hereto, the above and foregoing constitute the whole agreement between the parties and no additional or different oral representation, promise or agreement shall be binding on any of the parties hereto with respect to the subject matter of this instrument. To the extent that any special provisions attached hereto are in conflict with any other provisions hereof, such special provisions shall control and supersede any other term or provisions hereof.

IN WITNESS WHEREOF, the parties hereto have executed the within Agreement as of the day and year first above written.

The Veterans Administration, acting for and in behalf of the United States of America, under and by virtue of the authority in 40 United States Code 319 (76 stat. 1129)

ATTEST:

By: _____
(TITLE)

(Individual Acknowledgement)

CITY OF WASHINGTON)
~~STATE OF COLORADO~~)
DISTRICT OF COLUMBIA) ss.
~~XXXXXXXXXXXXXXXXXXXX~~)

By: W. A. Salmond
W. A. SALMOND (TITLE)
Assistant Deputy Administrator
for Construction

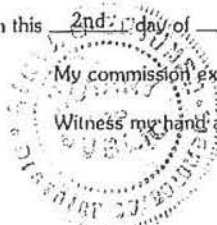


The within and foregoing instrument was acknowledged before me by W. A. SALMOND, Assistant
Deputy Administrator for Construction, Veterans Administration

on this 2nd day of May, 1983

My commission expires: March 31, 1985

Witness my hand and official seal.



(Corporate Acknowledgment)

Linda S. Estunen
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by _____

as _____ President and _____ as

Secretary of _____,

a _____ corporation

on this _____ day of _____, 19____

My commission expires: _____

Witness my hand and official seal.

Notary Public

CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS

By: W. S. Miller
Manager

APPROVED:

[Signature]
Director of Engineering

APPROVED AS TO FORM:

[Signature]
Legal Division

NW 1/4 SECTION 6, TOWNSHIP 4 SOUTH, RANGE 67 WEST 6th P.M.
— CITY & COUNTY OF DENVER —

